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14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION**

16 **VOICE INTERNATIONAL, INC., a**
17 **California corporation; DAVID**
18 **GROBER, an individual,**

19 **Plaintiffs,**

20 **vs.**

21 **OPPENHEIMER CINE RENTAL,**
22 **LLC, et al.,**

23 **Defendants**

Case No.: 2:15-cv-08830-JAK(KS)

Joint Status Report

24 **PLAINTIFF'S STATEMENT**

25 In the party's Joint Report, Dkt. 218, Defendants requested mediation.
26 Plaintiffs disagreed. Plaintiffs, after recent talks with OPEL, now agree mediation
27 could produce results.
28

1 Taking the lead, Plaintiffs submitted to Defendant OPEL a settlement offer
2 similar, if not almost identical to the settlement resolution for three defendants in
3 Mako-1. That offer was negotiated for defendants in Mako-1 by David Peck of
4 Coast Law. In the instant case, OPEL is likewise represented by David Peck of
5 Coast Law. The previous settlement seemed like a good framework and was
6 successful.

7 Concerning mediation dates and the deposition of John Dann. Plaintiffs held
8 discussion with counsel for OPEL, Mark Young. They agreed that Mr. Young and
9 John Dann would be available for Mr. Dann's deposition in Los Angeles on the day
10 after mediation. The only stipulation is Plaintiffs pay overnight hotel for Mr. Young
11 and Mr. Dann. Plaintiffs agreed and notified Mr. Young of this, in writing, in their
12 settlement offer.

13 In the February 12, 2018 hearing, Defendant's Mark Young said he planned
14 to take Grober's deposition in Los Angeles.

15 The Court advised the parties to submit a schedule based on
16 mediation. Plaintiffs' request follows the above agreements with one exception.
17 Plaintiffs request Dann's deposition take place the *day before* mediation, rather than
18 the day after. Grober's deposition could also occur prior to mediation. This would
19 allow mediation to proceed with the most significant discovery on the table,
20 including Dann and Grober's depositions. This is the best chance for success. Let
21 the parties negotiate with the truth on as many facts as possible.

22 Discovery on Oppenheimer remains open concurrent with OPEL. This so
23 Plaintiff can get follow-up discovery from Oppenheimer on information and
24 documents received from OPEL. The Court's order reopened fact discovery,
25 without limitations. Doc. 224. Contrary to Def Oppenheimer's statement below,
26 Plaintiffs timely made infringement contentions. Doc. 171-2.

1 Plaintiffs propose the following schedule:

- 2 1. Deposition of John Dann, 1-2 days prior to mediation.
- 3 2. Deposition of Grober, 1-2 days prior to mediation if requested by Defendants.
- 4 3. Mediation with the Magistrate on or about March 23, 2018.
- 5 4. Propounded discovery for both parties, normally 30+ days, reduced to 25 days
- 6 including emailing responses to the propounding party. (The purpose is to allow
- 7 both parties to propound and receive discovery prior to the depositions and
- 8 mediation. If there is no settlement, the parties will have time to propound
- 9 discovery after the depositions and mediation, and receive it prior to the close of
- 10 discovery, April 30, 2018. Shortening discovery responses from 30 days to 25 days
- 11 including mailing will cause no prejudice to either party.

12
13 **Discovery required**

14 The deposition of Dann will include questions about MakoHead rental and
15 sales activities and related discovery including prior to the incorporation of OPEL.
16 Attached exhibit OPP000111, obtained from Oppenheimer, shows OPEL was doing
17 MakoHead rentals at least as early as April 16, 2012, eight months before Mako
18 declared bankruptcy, and over a year before OPEL was incorporated in the
19 Bahamas. JDO76. Discovery prior to OPEL's incorporation is well founded, and
20 it is not known how far back these activities go.

21 Also, Oppenheimer's relationship with the MakoHead and its rentals and
22 sales all started in about 2006, and took place with John Dann as the office manager
23 for all MakoHead activities. Oppenheimer was a defendant in Mako-1, was
24 dismissed on jurisdiction due to lack of evidence, which was later uncovered.
25 Activities and communications from the time Oppenheimer commenced MakoHead
26 activities, are highly relevant to this case, including for willful infringement which
27 has been pleaded.

1 Plaintiffs request the Court instruct that in the OPEL deposition, they cannot
2 refuse to answer if the question pertains to any aspect of Mako Products Inc.,
3 OPEL, the MakoHead, and any documents pertinent to those three, with the
4 exception of not being required to disclose the content of privileged
5 communications with their attorneys.

6
7 **OCEANIC PRODUCTION EQUIPMENT LTD'S (OPEL's) STATEMENT**

8 As stated by OPEL during the trial setting conference on February 12, 2018,
9 OPEL is preparing motions for summary judgment of invalidity and
10 noninfringement, which it anticipates filing within a few weeks (no more than 30
11 days) after the Court's Supplemental Claim Construction ruling. Also, as stated by
12 OPEL during the trial setting conference, mediation will be far more productive
13 after the summary judgment motions are filed. The motions will draw attention to
14 strengths and weaknesses.

15 OPEL proposes mediation at or near the close of discovery, on or about April
16 30, 2018. This will allow the Plaintiffs time to consider and respond to the
17 summary judgment motions, for the benefit of the mediation. This will also allow
18 time for OPEL and the Plaintiffs to conclude any remaining discovery.

19 Following the trial setting conference on February 12, 2018, Mark Young,
20 counsel for OPEL, discussed with Plaintiff David Grober and Robert Lauson that if
21 Plaintiffs would like to depose John Dann the day after mediation, he would make
22 Mr. Dann available during normal business hours, provided that Plaintiffs pay for
23 Mr. Young's and Mr. Dann's overnight stay and per diem expenses for the
24 additional day, and further provided that Plaintiffs conclude the deposition at a time
25 that allows Mr. Young and Mr. Dann to travel to the airport and check-in for flights
26 home that evening. Mr. Young also made clear that he and Mr. Dann would stay in
27 a hotel of their choosing and would not return on a red-eye flight. In view of these
28 constraints, Mr. Young advised Plaintiff Grober and Robert Lauson that they could

1 simply notice and schedule the deposition in Florida in accordance with the Federal
2 Rules of Civil Procedure, where they can control their schedule, travel and
3 accommodations.

4 Also following the trial setting conference on February 12, 2018, Mr. Young
5 made clear to Plaintiff Grober and Robert Lauson that he would not be willing to
6 extend the stay for a total of 3 consecutive days to also conduct a deposition of Mr.
7 Grober. Mr. Young will notice and schedule Mr. Grober's deposition in accordance
8 with the Federal Rules of Civil Procedure and this Court's scheduling order, if and
9 when Mr. Young and OPEL decide to proceed with a deposition of Plaintiffs.
10 OPEL objects to any attempt by Plaintiffs to require OPEL to take a deposition or
11 to dictate the timing and location of OPEL's depositions.

12 Under Rules 33(b)(2) and 34(b)(2)(A) of the Federal Rules of Civil
13 Procedure, responses to discovery are due within 30 days. With over two months
14 remaining before the close of discovery, each party has ample time for follow-up
15 discovery. OPEL objects to any shortening of the allowable time for response.

16 Plaintiffs' requested instruction regarding refusals to answer is improper, as
17 exceedingly vague, unwarranted and not in the form of a motion. OPEL intends to
18 comply with all rules applicable to discovery depositions, and has never indicated
19 otherwise.

20 Plaintiffs flagrantly misrepresent OPP000111. Mako Products, Inc., formerly
21 a Florida corporation, was liquidated and dissolved pursuant to and in accordance
22 with a voluntary bankruptcy, in which Plaintiffs unsuccessfully brought claims for
23 infringement of the '622 patent. OPEL acquired assets of Mako Products, from the
24 Mako Products bankruptcy. Among the acquired assets were Mako Products
25 receivables. OPP000111 is an invoice (# 9334) to Oppenheimer Cine Rental, LLC,
26 dated June 13, 2012. Originally, the invoice was sent by Mako Products to
27 Oppenheimer Cine Rental, LLC. Originally, the invoice identified Mako Products
28 in the upper left portion of the invoice. OPEL was not formed until May 29, 2013.

1 After the formation of OPEL and OPEL's acquisition of the Mako Products assets,
2 OPEL updated Mako Products QuickBooks file with OPEL's information. To
3 pursue payments on receivables and have those payments made payable to OPEL,
4 OPEL reissued invoices by printing them from QuickBooks. QuickBooks retained
5 all information from the original invoice, as originally issued by Mako Products,
6 except the identification in the upper left portion of the invoice. That identification
7 was replaced, by QuickBooks, with OPEL's information. The date, description,
8 invoice number, amounts and customer information remained the same as on the
9 original invoice.

10 OPEL objects to re-opening discovery with the Oppenheimer defendants.
11 Plaintiffs have already had ample time to conduct and conclude discovery with the
12 Oppenheimer defendants. Plaintiffs have not moved for the re-opening of
13 discovery and have not shown good cause for deviating from the previously
14 established schedule. Additionally, the request is untimely. Many months have
15 passed since the close of discovery.

16 17 **OPPENHEIMER DEFENDANTS' STATEMENT**

18 As set forth by the Court at the February 12, 2018 Status Conference,
19 discovery as to the Oppenheimer Defendants is *closed* except as to any issues that
20 were not known or should have been known to Plaintiffs which becomes revealed
21 through discovery from OPEL. Plaintiffs are not permitted to reopen discovery at
22 this late stage of the case. Contrary to Plaintiffs' claim in citing to Docket No. 224,
23 the Court never reopened discovery without limitation.

24 Plaintiffs also failed to submit any infringement contentions in this case.
25 Thus, what is instead clear from the Court's order (Dkt. No. 224) is that Plaintiffs
26 are barred from submitting any infringement contentions at this stage beyond
27 infringement contentions relating to the supplemental terms at issue in the parties'
28 supplemental claim constructions.

1 Plaintiffs continue to refuse to make any reasonable settlement offer to
2 Oppenheimer Defendants and instead have apparently only submitted a settlement
3 offer to OPEL, as represented by Plaintiffs above.

4 The Oppenheimer Defendants are amenable to mediation before Mag. J.
5 Stevenson no earlier than the end of March 2018 after the Court issues its
6 supplemental claim construction ruling and after OPEL files its motion for
7 summary judgment. The Oppenheimer Defendants will appear at such mediation
8 provided that OPEL is also present at the mediation.

9
10 Respectively Submitted,
11 DATED: February 20, 2018 LAUSON & TARVER LLP

12 By: /s/ Robert J. Lauson
13 Robert J. Lauson, Esq.
14 Attorney for Plaintiff
VOICE INTERNATIONAL

15 By: /s/ David Grober
16 David Grober
17 In Pro Per

18 FOX ROTHSCHILD, LLP

19
20 By: /s/ Ashe Puri
21 James E. Doroshow, Esq.
22 Ashe Puri, Esq.
23 Attorney for Defendant
OPPENHEIMER CINE RENTAL,
OPPENHEIMER CAMERA RENTAL,
MARTY OPPENHEIMER

24
25 MARK YOUNG, P.A.

26 By: /s/ Mark Young
27 Mark Young, Esq.
28 Attorney for Defendant
OCEANIC PRODUCTION EQUIPMENT, LTD.

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